REMARKS/ARGUMENTS

Claims 1, 19, 21, 24-27, and 29-36 are pending and stand substantively rejected. Claims 2-18, 20, 22, 23, and 28 were previously canceled. In this Amendment, claims 31 and 32 are amended, and claim 33 is canceled. Reconsideration is respectfully requested.

The Applicant's undersigned representative thanks the Examiner for the courtesies extended during the telephone conversation of January 26, 2009.

First Rejection Under 35 U.S.C. §103

Claims 1, 19-21, 24-27, and 29-36 were rejected under 35 U.S.C. §103(a) as allegedly obvious over US 4,482,386 ["Wittwer] in view of US 4,124,705 ["Rothman"] and US 4,515,637 ["Cioca"]. This rejection is traversed.

It is well established that a *prima facie* case of obviousness requires, among other things, a showing that all claim elements are considered when determining patentability against the cited references. Applicants submit that the combination of Wittwer, Rothman, and Cioca does not meet this test as applied to the pending claims.

Presently pending independent claim 1 is drawn to an extrudable fragmented biocompatible resorbable single phase aqueous colloid. The single phase aqueous colloid has an equilibrium swell from 400% to 5000%.

In general terms, Wittwer describes varying water-swellability within certain limits at Col. 2, lines 57-60. More specifically, Wittwer describes an absorption isotherm at col. 3, lines 31-46 and at Fig. 1. According to Fig. 1, the water content is within a range from about 0.0 to about 0.5 (kg water per kg gelatin).

According to the Office Action, the artisan would have been able to produce gelatin hydrocolloid gels with the desired amount of water and obtain an even distribution of water within the granules. However, Applicants submit that Wittwer does not even remotely contemplate the presently claimed equilibrium swells.

As indicated in the instant application at, for example, page 18 lines 17-28, the term "equilibrium swell" can be defined as the percent swell at equilibrium, and the term

"percent swell" can be defined as the dry weight subtracted from the wet weight, divided by the dry weight and multiplied by 100.

According to this construction, Wittwer's maximum water content of about 0.5 involves a dry weight of 1.0kg and a wet weight of 1.5kg. Hence, Wittwer's resulting maximum percentage is ((1.5-1)/1)*(100)= 50%. Wittwer's 50% value relates to water content, but Wittwer does not mention equilibrium swell value ranges at all. In particular, Wittwer does not mention equilibrium swell value ranges such as those presently claimed.

Thus, although Wittwer may discuss water content or varying the water swellability, Wittwer does not teach or suggest equilibrium swells from 400% to 5000% as presently claimed.

Rothman discusses a suspension of minute polysaccharide particles, and Cioca discusses a collagen-thrombin hemostatic composition. Yet neither Rothman nor Cioca teach or suggest a single phase aqueous colloid having an equilibrium swell from 400% to 5000%. Hence, these references do not remedy the deficiencies of Wittwer, and the proposed combination does not support a *prima facie* case of obviousness for presently pending independent claim 1.

Presently pending claims 19-21, 24-27, and 29-32 depend from base claim 1, and are therefore allowable as depending from an allowable base claim as well as for the nonobvious combination of elements they recite.

Presently pending independent claims 34-36 also recite colloids having similar equilibrium swells, and for many of the reasons given above with regard to claim 1, are also nonobvious in view of Wittwer, Rothman, and Cioca. Withdrawal of this rejection is requested.

Rejection Under 35 U.S.C. §112

Claims 31-33 were rejected under 35 U.S.C. §112, second paragraph, as allegedly lacking antecedent basis. This rejection is traversed.

Claims 31 and 32 are amended and claim 33 is canceled, as suggested by the Examiner during the above-referenced telephone conference of January 26, 2008. Withdrawal of this rejection is requested.

Determination of the Statutory Period for Reply (Advisory Action Box 1.)

According to MPEP 706.07(f)(I)(C)(3):

- if the Applicant files a Response to the final Office Action within 2 months of the date of the final Office Action, and

- if the Examiner determines that the Reply does not place the application in condition for allowance

- then the Advisory Action should inform applicant that the SSP for reply expires 3 months from the date of the final rejection or as of the mailing date of the advisory action, whichever is later, by checking box 1.b) at the top portion of the Advisory Action form, PTOL-303.

Relatedly, according to MPEP 710.01(a):

The time for Reply is computed from the date on the Office Action to the date of receipt by the Office of applicant's reply. Applicant's reply is due on ***the corresponding day of the month*** 6 months or any lesser number of months specified after the Office Action. A reply to an Office action dated *February 28* is due on *May 28*.

In the instant case, in response to the final Office Action mailed September ***25***, 2008, the Applicant filed a Response on November ***25***, 2008. Hence, Applicant filed a Response within two months of the date of the final Office Action, according to the MPEP.

In the Advisory Action, the Examiner determined that the Response did not place the application into condition for allowance.

Therefore, the Advisory Action should have checked box 1.b) and not box 1.a).

Because the Applicant filed a Response within two months of the final Office Action, and the Examiner determined the Response did not put the application into condition for allowance, it follows that the SSP for reply expires not 3 months from the date of the final rejection (December 25, 2008), but rather the mailing date of the advisory action (January 8, 2009), because the Advisory Action mailing date is the later date.

Relatedly, the instant Response includes a Request to extend the time period for reply by **one month** (i.e. to February 9, 2009) along with a Request for Continued Examination.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

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